

AMENDED IN ASSEMBLY MARCH 13, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 274

Introduced by Assembly Member Koretz

February 5, 2003

An act to add Section 1182.9 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 274, as amended, Koretz. Employment.

Under existing law, it is unlawful for a person to retaliate against an employee for exercising his or her employment rights.

This bill would create a rebuttable presumption that an adverse employment action taken within 90 days after an employee exercises his or her employment rights is retaliatory, unless there is clear and convincing evidence that the employee made up the claim in order to prevent the employer from taking adverse employment action. *This presumption would not apply to the criminal penalty for retaliation.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1182.9 is added to the Labor Code, to
2 read:
3 1182.9. (a) Except in the circumstances of a normal seasonal
4 layoff or a general reduction in force affecting a majority of
5 employees, if a person discharges an employee or demotes,

1 suspends, or reduces the hours of work or pay of an employee
2 within 90 days after the employee has exercised any of the rights
3 enumerated in this code, there is a rebuttable presumption
4 affecting the burden of proof that the person's action was
5 retaliatory and in violation of Section 98.6, *provided, however,*
6 *that this presumption shall not apply to the criminal penalty set*
7 *forth in subdivision (b) of Section 98.6.* The burden of proof under
8 this subdivision shall be preponderance of the evidence. Nothing
9 in this section shall be construed to give the Labor Commissioner
10 concurrent jurisdiction with the Workers' Compensation Appeals
11 Board with regard to discrimination complaints.

12 (b) The presumption created by this section is inapplicable if it
13 is shown by clear and convincing evidence that the employee has
14 fabricated a retaliation claim to forestall his or her employer from
15 taking an adverse employment action.

